

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**DARRYL DUNSMORE,**

Petitioner,

**v.**

**PARAMO, Warden,**

Respondent.

CASE NO. 13-CV-1193-GPC-(PCL)

**ORDER DENYING PETITIONER'S  
MOTION FOR AMENDMENT**

**[Doc. No. 42]**

Before the Court is Petitioner's Motion for Amendment of Discovery. [ECF. No. 42.] This Motion is submitted in response to the Courts previous order denying his motion for discovery. [ECF. No. 33.] In this Motion, Petitioner submits three additional documents to establish that he was diligent in attempting to present materials at the state court level that he now seeks to introduce to this Court. (Id. at 4.)

In this instance, Petitioner introduces 1) a declaration of proof by the Petitioner submitted to the superior court, 2) a second declaration of proof by the Petitioner submitted to the California Court of Appeals and 3) a declaration from Petitioner's mother. (Id. at 5.) Petitioner also submits three additional exhibits entitled, 4) Petitioner's civil litigation for discovery against the Court officials involved, 5) exhibit 7 of Habeas

1 11201 concerning order declaratory for discovery, 6) litigation for discovery against  
 2 attorney Lee Plummer and lastly 7) other documents supporting diligence.

3 Generally, new evidence may be introduced on federal habeas “only if respondent was  
 4 not at fault in failing to develop that evidence in state court, or (if he was at fault) if the  
 5 conditions prescribed by § 2254(e)(2) were met.” Holland v. Jackson, 542 U.S. 649,  
 6 652-53,(2004) (citing Williams, 529 U.S. at 431-37). This rule applies to requests for  
 7 evidentiary hearings, and whenever parties seek relief based on new evidence. Id. The  
 8 rule also covers a motion to expand the record under Habeas Rule 7. Cooper-Smith v.  
 9 Palmateer, 397 F.3d 1236, 1241 (9th Cir.2005). However, in this case Petitioner does not  
 10 offer new evidence concerning his Petition but rather asserts a request for the Court to  
 11 locate and produce evidence listed in his motion [ECF. No. 42. at 25-29.] This request is  
 12 outside the scope of Rule 7 which does not apply here. Furthermore, the Court has  
 13 granted several motion’s by the Petitioner to extend time and file oversized briefs relating  
 14 to his Petition to ensure that the Petitioner is able to fully present his claims for habeas  
 15 review.

16 For these reasons, the Court **DENIES** Petitioner’s Motion for Amendment.

17  
 18 **IT IS SO ORDERED.**

19  
 20 DATE: December 10, 2013

21   
 22 Peter C. Lewis  
 United States Magistrate Judge

23 cc: The Honorable Gonzalo P. Curiel  
 24 All Counsel of Record  
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